IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26-09-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 23952 of 2002

1. P. Ganesah (deceased)
2. G. Fathima Mary
3. G. Jancy Rani
4. G. Vinoba

(Petitioners 2 to 4 substituted
as legal heirs of deceased first
petitioner as per Order dated
14.03.2006 made in WPMP No.2843
of 2006) .. Petitioners

Versus

1. State of Tamil Nadu
rep. by its Secretary to Government
Municipal Administration and
Water Supply Department
Chennai

2. The Commissioner
Corporation of Chennai
Chennai

3. The Zonal Officer VIII
Corporation of Chennai
No.64, N.S.K. Salai
Kodambakkam
Chennai 600 024 .. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus as stated therein.

For Petitioners : Mr. Anand Venkatesh

For Respondents : Mr. Dhandapani
Additional Government Pleader for R1
Mr. C. Ravichandran for R2 & R3

ORDER

The prayer in this Writ Petition is for a Writ of Certiorarified Mandamus calling for the records dated 16.04.2001 made in M.A.83 K.No.A7/1739/2000 of the third respondent and quash the same as null and void and direct the second respondent to sanction the revised pension including the period of 15 years as regular service and consequently award Selection Grade Special Grade benefit as per G.O.Ms.68, Personal and Administrative Reform dated 23.01.1986 and refund the amount of Rs.19455.81 with interest at the rate of 12% per annum within a reasonable time.

2. The first petitioner herein has filed this writ petition. Pending writ petition, he died on 11.06.2004 and his legal heirs were brought on record as petitioners 2 to 4, hence, for the sake of convenience, the first petitioner shall hereinafter be referred to as 'petitioner'.

3. The learned counsel appearing for the petitioner submitted as follows:-

The petitioner joined duty in the second respondent office in the labour service on 08.08.1947 and after having served for 42 years continuously, he retired as Blue Printer on 31.05.1989. According to the petitioner, the period from 1947 to 1960 and 01.06.1987 to 31.05.1989 had not been included by the respondents at the time of final settlement. It is stated that the petitioner has paid the interest and employer's share of bonus fund to include the service for the said period from 1947 to 1960 as per Challan No.PCC 01 dated 16.10.1964. It is also stated that as per Rule 78 of Pension Rules, the pension amount is payable from the date of superannuation but it was extended belatedly after six years and as such the petitioner is entitled to interest at the rate of 18% for the belated period. As per Rule 29 of the said Rules, the qualifying service should be determined and communicated to the Government servant, who completed 28 years of service or 53 years of age, whichever is earlier, but it was not done. The petitioner has put in 42 years of service and therefore the second respondent ought to have awarded selection grade and special grade to him as per G.O. Ms No. 68 of Personal Administrative Reform (Per.M) dated 23.01.1986. The respondents ought to have given pensionary benefits to the petitioner from the date of superannuation namely 31.05.1989. The respondents have erroneously adjusted a sum of Rs.19,455.81 without the consent of the petitioner or show cause notice as if the said amount was paid to him in excess during his service between 01.06.1987 to 31.05.1989, consequently, the pension amount was also reduced from Rs.388 to Rs.295/-. In this context, the petitioner has submitted a detailed representation dated 20.06.2000 mentioning the said facts to the second respondent, which was rejected by the impugned order dated 16.04.2001 of the third respondent, hence the present writ petition has been filed.

4. The learned standing counsel appearing for the respondents 2 and 3, relying on the counter affidavit of the second respondent submitted that the date of appointment of the petitioner is 05.04.1948; that the petitioner was brought into regular time scale of pay only with effect from 01.06.1960 as per I Pay Commission's recommendations and he retired from service on 31.05.1987, which is the actual date of superannuation and the rest of the period from 01.06.1987 to 31.05.1989 was treated as re-employment as per G.O. Ms. NO.173/MA&WS Department dated 30.06.1994; that the Joint Examiner of Local Fund Accounts, Corporation Audit vide letter bearing No.L.Dis.2796/E2/1989 dated 15.05.1989 mentioned that the services rendered by the petitioner in the labour cadre in time scale of pay be reckoned subject to the condition that the employers share of bonus fund along with interest may be recovered from 01.06.1960 as against 05.04.1948 as contended by the petitioner and accordingly the petitioner was directed to remit the bonus share of Rs.162.50 with interest of Rs.314/- totalling Rs.477.50, which was also added for pension qualifying service; that the labour category is not covered by pension scheme, therefore, the petitioner cannot seek to count temporary service in labour category in virtue of G.O.Ms. No.974, MA&WS

Department dated 07.11.1988, which was also pointed out by the Joint examiner of local fund Audit corporation as mentioned above; that temporary service in labour category of fixed pay of Rs.27/- from 05.04.1948 to 31.05.1960 cannot be counted for pension even according to the above said G.O. Ms. No. 974 dated 07.11.1988; that the peitioner served in the Corporation of Chennai till 31.05.1989 upto the age of 60 years, therefore, the then Commissioner, Corporation of Chennai had sought for clarification with regard to age of superannuation of certain category of employees to the Government and the Government also issued G.O. Ms. No.173 dated 30.06.1994 clarifying that superannuation of the employees of the Corporation of Madras in the category of Mutchi, Blue Printer, Reading Room Attender, Head Cook and Time Keeper be fixed at 58 years, hence the service rendered by the petitioner in the above said post beyond 58 years of age was treated as re-employment; that the petitioner was given selection grade scale of pay while he was in the post of Office Assistant till 05.01.1986 and he was promoted as blue printer on 06.01.1986; that the petitioner worked as Blue Printer for a period of one year and two months, hence, he was not eligible for selection grade; that provisional pension was disbursed to the petitioner immediately after his retirement, since, the case relating to determination of age of superannuation of certain categories of employees of the Corporation of Madras was pending before the Court. It is further stated that the petitioner has also given consent letters on 14.12.1990 and 15.05.1995 stating that if excess amount, if any is paid, the same would be remitted by him on a later date and accordingly, the sum of Rs.19,455.81 was adjusted towards excess salary paid to the petitioner during his re-employment period and prayed for dismissal of the writ petition.

5. The learned Additional Government Pleader appearing for the first respondent adopted the arguments advanced by the learned standing counsel for the respondents 2 and 3 and prayed for dismissal of the writ petition.

6. I heard the counsel for both sides and perused the materials placed. The Government has issued G.O. Ms. No. 173, MA&WS Department dated 30.06.1994 fixing the age of superannuation at 58 years to the labour category of employees of Corporation of Madras such as Drivers, Mechanics, Artisans, Bricklayers etc., The Commissioner, Corporation of Madras in his letter dated 08.01.1994 has stated that the post of Blue Printer comes under establishment category and it carries higher scale of pay than the basic servants. But, the appointees of this post are allowed to retire at the age of 60 years. After the adoption of G.O. Ms. No. 611, MA&WS Department dated 22.06.1987, fixing the age of superannuation at 58 years to the labour category of employees who are drawing higher scale of pay than the basic servants, it would be unfair to permit similar category of employees viz., Mutchi, Blue Printer, Timekeeper, Head Cook and Reading Room Attender to retire at 60 years superannuation. Hence, the Commissioner, Corporation of Madras has requested the Government to fix the age of superannuation at 58 years to the category of employees coming under establishment viz., Mutchi, Blue Printer, Reading Room Attender, Head Cook and Time Keeper etc., Accepting the request of the Commissioner of Corporation, the Government has passed the said Government Order dated 30.06.1994 fixing the age of superannuation of the employees working in the categories of Mutchi, Blue Printer etc., at 58 years. It is to be remembered that the petitioner retired on 31.05.1989 itself, whereas, the Commissioner of Corporation has written the said letter to the Government on 08.01.1994, based on it, the said G.O. Ms. No.173 dated 30.06.1994 was issued by the Government, both are admittedly after five years from the date of superannuation of the petitioner. Hence, it is clear that when the petitioner reached the age of superannuation on 31.05.1989, there was no order to retire the said categories of employees, including the petitioner at the age of 58 years in force. In other words, the then existing legal position for retirement was only 60 years. For the reasons mentioned above, the recovery of Rs.19,455.81 recovered from the petitioner is liable to be refunded by the respondents 1 and 2 with interest at the rate of 12% per annum from the date of recovery till the date of disbursement.

7. It is the case of the petitioner that he was called upon to pay employer's share of bonus fund along with interest to ratify the period from 1947 to 1960 as qualifying service and accordingly, as per Challan No. PCC No.1 dated 16.10.1964 he has remitted a sum of Rs.162.50 towards bonus fund share and Rs.314/- towards interest in all Rs.477.50. The respondents, instead of ratifying this period from 1947 to 1960 have ratified only the period from 01.06.1960 onwards, besides, the respondents have not produced the said Challan No.1 dated 16.10.1964 before this Court for consideration. Even the counter filed by the second respondent is silent in this aspect. In this context, it is necessary to refer to the relevant portion of Rule 11 (1) The Tamil Nadu Pension Rules, 1978 which says that

"11. (1) Subject to the provisions of these Rules, qualifying service of a Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity...."

It is evident from the said Rule that the qualifying service of the Government Servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. Applying Rule 11 (1) of the Tamil Nadu Pension Rules and also the facts mentioned above in the context that the respondents have not disputed that the petitioner joined the service of the corporation on 08.08.1947, this Court is of the view that the petitioner's qualifying service has to be reckoned from 08.08.1947 to 31.05.1960.

8. It is canvassed by the Petitioner that Rule 29 of Tamil Nadu Pension Rules has not been followed by the respondents while determining the qualifying period of service. Rule 29 runs as follows:-

"29. Verification of qualifying service after 28 years of service or 53 years of age- Where a Government servant completes 28 years of service or 53 years of age, whichever is earlier, the audit officer concerned in the case of a self drawing government servant or the head of office in consultation with the audit officer concerned in the case of non self drawing government servant shall in accordance with the Rules for the time being in force, verify the service rendered by such Government servant, determine the qualifying service and communicate to him the period of qualifying service so determined.
Provided that any such verification shall be subjected to final verification of qualifying service it shall be made at the time of retirement of the Government servant."

In this case, the respondents 2 and 3 have admittedly not communicated to the petitioner the qualifying period of service which is evident in the counter filed by the second respondent that the same is not disputed.

9. It is averred by the petitioner that as per G.O. Ms. No.68, Personnel and Administrative Reforms (Per.M) Department dated 23.01.1986, special grade and selection grade were not granted to him. It is replied by the respondents/corporation that selection grade in the post of Office Assistant was granted to the petitioner till 05.01.1986. Clause 3 (1) of the said G.O. Ms. No.68 dated 23.01.1986 is as follows:-

"3 (i) For advancement to selection grade/special grades, all employees who have put in 10/20 years of satisfactory service and who satisfy all the qualifications prescribed under the Special Rules, adhoc Rules prescribed for promotion to higher post shall be eligible."

In view of the above, the respondents are directed to re-consider the request of the petitioner for awarding special grade scale since it is averred by him that he continued in the post of Office Assistant for more than 23 = years.

10. It is averred by the petitioner that terminal benefits has to be disbursed by the respondents immediately after his superannuation, whereas, it was disbursed to him after a delay of 6 years, hence, he is entitled for interest. In the counter, the second respondent has stated that the issue relating to fixation of age of superannuation for certain category of employees of the Corporation were pending before the Court, hence, the delay had occurred. Admittedly, the delay is not due to the fault of the petitioner, hence, the respondents are directed to pay interest at the rate of 12% per annum on the terminal benefits from the date of superannuation of the petitioner till the date of disbursement.
11. In view of the above, the respondents are directed to
i) refund the sum of Rs.19455.81 recovered from the petitioner with interest at the rate of 12% per annum from the date of recovery till the date of disbursement.
ii) To grant the selection grade to the petitioner in the cadre of Office Assistance since the petitioner continuously worked for 23 = years. In addition to the above, the respondents are directed to include the period from 08.08.1947 to 31.05.1960 and 01.06.1987 to 31.05.1989 as qualifying service and refix the pension accordingly and pay interest at the rate of 12% per annum till the date of disbursement.
iii) The respondents are directed to complete the above said exercise and disburse all the pensionary benefits payable to the first petitioner to the petitioners 2 to 4 as they have claimed themselves as legal heirs of the first petitioner, within a period of three months from the date of receipt of a copy of this order.

12. The writ petition is disposed of accordingly. No costs.

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To

1. The Secretary to Government
State of Tamil Nadu
Municipal Administration and
Water Supply Department
Chennai

2. The Commissioner
Corporation of Chennai
Chennai

3. The Zonal Officer VIII
Corporation of Chennai
No.64, N.S.K. Salai
Kodambakkam
Chennai 600 024

[vsant 8108]